

**DURHAM, NORTH CAROLINA  
MONDAY, OCTOBER 6, 2008  
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Absent: None.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order recognizing Fire Chief Bruce Pagan to address the fire regulation in terms of the number of people within the Council Chambers.

The Mayor requested a moment of silent meditation and Council Member Clement led the pledge of allegiance.

The following proclamations were read by Mayor Bell: 1) October 8, 2008 as "International Walk to School Day" that was presented to Safe Kids Durham County Coordinator Theresa M. Cromling who gave a slide presentation and invited everyone to participate in the Walk to School event on Wednesday, October 8 at 8 am ; 2) Disability Awareness Month presented to Parks & Recreation Manager for Special Programs Sarah Hogan who made comments on activities planned during the month of October; 3) "50<sup>th</sup> Anniversary of the First Ten Black Firefighters" presented to Fire Chief Bruce Pagan and Captain Angelica Stroud. Fire Chief Pagan made comments and introduced retired firefighters; 4) October 19-25, 2008 as Urban Ministries Week presented to John Bowman, Chair of the Board; Greg Rowland and Debbie Stonehouse, Board Members and Julia Webb Bowman, staff member. Chair John Bowman made comments and urged everyone to attend their 25<sup>th</sup> Anniversary celebration; 5) "Domestic Violence Awareness Month" presented to Human Relations Director Yvonne Pena who made comments and unveiled the public service announcement on domestic violence; and 6) "AARP" presented to Local Chapter President Barbara Lofton who made comments.

Council Member Woodard thanked the staff of the following departments for their involvement in the events mentioned below: Equal Opportunity/Equity Assurance -- Minority Enterprise Development Week Kick-Off Luncheon, Parks & Recreation -- Woofstock; Parks & Recreation and Office of Economic and Workforce Development -- World Beer Festival.

Council Member Catotti introduced Cub Scout Pack 405 from St. Matthews Catholic Church.

Council Member Ali made comments on the Minority Enterprise Development Week and invited the citizens of Durham to participate in a session at the Sheraton with the Chancellors of Historically Black universities in the area about the importance of securing the future of students and the impact of how \$700 billion bailout will affect the students in North Carolina.

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Mayor Pro Tempore Cole-McFadden announced she attended the 2nd Annual Project Homeless Connect and commended Edith Thompson, Lanier Foster and others involved with this endeavor, thanked her colleagues who participated in the feeding at the Good Samaritan Inn; thanked the Pastors of Kings Park International Church for recognizing governmental personnel and officials--God Loves Our Government; commended Rev. Dickerson and congregation of Orange Grove Missionary Baptist Church on the dedication of its education building; commended everyone who was involved with the Junior Leadership Durham --Mock Council/Commissioner session; attended Neal Middle School Open House, congratulated Sisters Network for their Cancer event; and attended the African American Faith Forum on HIV/AIDS.

Council Member Clement made comments on his participation at the Junior Leadership Durham program thanking city and county employees along with others involved for their role. He announced that Durham was named in the *Black Enterprise* magazine as the Best Place to Retire.

Mayor Bell reported there was discussion during the Congressional Black Caucus meeting held in Washington regarding Durham being the #1 Place to Retire.

Regarding the attendance tonight, Mayor Bell mentioned he had a conversation with Sergeant David Addison who asked to speak tonight. The Mayor said he informed Mr. Addison that it was not appropriate to bring that discussion to the Council at this point in time and there is a process that they would like for City employees to follow in bringing issues ultimately to the Council. In this case, the process would have been to work through the Police Chief to the City Manager. At the appropriate time, he stated he would expect the City Manager to bring comments or recommendations back to the City Council. Also, he commended Corporal Addison for listening to his suggestion and recommended that others city employees follow this process as well.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk. City Manager Bonfield requested that GBA Item #19 be referred back to the administration and regarding Supplemental Agenda Item #41, he asked Council to open the public hearing only and to continue it to the October 20, 2008 City Council Meeting to allow staff more time to work on the issues, but not have to re-advertise the public hearing.

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to accept the City Manager's priority items was approved at 7:58 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

There were no priority items from the City Attorney and City Clerk.

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Consent Agenda Items 8, 14 and 25 were pulled by a citizen.

**MOTION** by Council Member Catotti seconded by Council Member Woodard to approve the Consent Agenda as amended was approved at 8:04 p.m. by the following vote: Ayes: Mayor

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Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**[CONSENT AGENDA]**

**SUBJECT: APPROVAL OF CITY COUNCIL MINUTES**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to approve City Council minutes for the August 18, 2008 and September 2, 2008 City Council Meetings; and

To approve City Council action taken at the August 21, 2008 City Council Work Session was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: MAYOR'S NOMINEE FOR APPOINTMENT - HUMAN RELATIONS COMMISSION**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to appoint Pamela Morris as Mayor's appointee to the Human Relations Commission with the term to expire on June 30, 2011 was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: LYON PARK ADVISORY BOARD - RECEIPT AND ACCEPTANCE OF APPLICATIONS**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to receive and accept applications for citizens to fill two (2) vacancies on the Lyon Park Advisory Board was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: HUMAN RELATIONS COMMISSION - REAPPOINTMENT**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to reappoint James Hill to the Human Relations Commission with the term to expire on June 30, 2011 was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: RESOLUTION AUTHORIZING THE SEMI-ANNUAL CITY AUCTION**

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**MOTION** by Council Member Catotti seconded by Council Member Woodard to adopt a resolution authorizing the Semi-Annual City Auction to be held on November 15, 2008 at 10:00 a.m. was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**Resolution #9604**

**SUBJECT: PIGGYBACK PURCHASE – TWO (2) FIRE & RESCUE PUMPERS - SUTPHEN CORPORATION**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to authorize the City Manager to enter into a contract with the Sutphen Corporation, in the amount of \$639,118.86, for providing the City with two (2) Fire & Rescue Pumps; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: MINIMUM NONRESIDENTIAL BUILDING CODE**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to set a public hearing on October 20, 2008 to receive public comments related to the Proposed Minimum Nonresidential Building Code was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: INVENTORY AUDIT (JUNE 30, 2008) AUGUST, 2008**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to receive and accept the Inventory Audit (June 30, 2008) as presented and approved at the August 25, 2008 meeting of the Audit Services Oversight Committee was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: SOLID WASTE TASK SYSTEM COMPLIANCE AUDIT - AUGUST, 2008**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to receive and accept the Solid Waste Task System Compliance Audit - August 2008 as presented and approved

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at the August 25, 2008 meeting of the Audit Services Oversight Committee was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
(HUD) INSPECTOR GENERAL AUDIT FOR THE CITY OF DURHAM  
HOME PROGRAM**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to receive and accept the HUD Inspector General Audit for the City of Durham HOME Program, as presented and approved at the August 25, 2008 meeting of the Audit Services Oversight Committee was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: CONSTRUCTION/PERMANENT LOAN AGREEMENT AND CHDO  
OPERATING GRANT AGREEMENT BETWEEN THE CITY OF  
DURHAM AND DURHAM COMMUNITY LAND TRUSTEES, INC.  
(DCLT)**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to authorize the expenditure of \$224,500.00 in HOME funds;

To authorize the City Manager to execute a Construction/Permanent Loan Agreement and related loan documents with Durham Community Land Trustees, Inc. in an amount of up to \$186,000.00 to acquire and rehabilitate two vacant residential duplexes in Southwest Central Durham;

To authorize the City Manager to execute a CHDO Operating Grant Agreement with DCLT in an amount of up to \$38,500.00 to fund a project construction manager position;

To authorize the City Manager to execute a HOME Investment Partnership Agreement with DCLT in an amount of up to \$224,500.00; and

To authorize the City Manager to modify the Agreements and other related documents before execution, provided that the modifications do not increase the dollar amount of the Agreements and do not lessen the obligations of the contractor was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: REPORT ON SALE OF 2008 GENERAL OBLIGATION BONDS, SERIES  
A AND B**

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**MOTION** by Council Member Catotti seconded by Council Member Woodard to accept a report on the July 15, 2008 Sale of General Obligation Bonds was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: REIMBURSEMENT RESOLUTION FOR CERTIFICATIONS OF PARTICIPATION (COPS) FUNDED PROJECTS**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to adopt a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with Certifications of Participation (COPS) financing for the purchase of technology equipment, including hardware and software, and the acquisition of vehicles for use by several City departments was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**Resolution #9605**

**SUBJECT: STATE TREASURER'S LOCAL GOVERNMENT OTHER POST EMPLOYMENT BENEFITS (OPEB) FUND**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to adopt a resolution authorizing the establishment of an investment account and Short Term Investment Fund (STIF) through the State Treasurer and the execution of the State Treasurer's Contribution Agreement was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**Resolution #9606**

**SUBJECT: REPORT ON 2008 PRIVATE PLACEMENT INSTALLMENT PURCHASE SALE**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to accept a report on the June 10, 2008 Sale Results from a Private Placement Loan was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: STATE FARM GRANT AWARD**

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**MOTION** by Council Member Catotti seconded by Council Member Woodard to authorize the City Manager to accept the City of Durham FY09 State Farm Grant by executing the grant documents; and

To adopt the City of Durham FY09 State Farm Grant Project Ordinance in the amount of \$1,000.00 was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**Ordinance #13706**

**SUBJECT: INTERSTATE 85 MEDIAN LANDSCAPE MAINTENANCE - SOUTHERN GARDEN, INC.**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to authorize the City Manager to execute a contract with Southern Garden, Inc. for contract I.85.MM.08 Interstate Median Landscape Maintenance, with a three year estimated cost of \$206,610.14 and a 20% contingency at a cost of \$41,322.00, for a total cost not to exceed \$247,932.14; and

To authorize the City Manager to modify the contract before execution provided that the modifications do not increase the dollar amount of the contract and that the modifications are consistent with the general intent of the existing version of the contract was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: HISTORIC LANDMARKS, GENERAL INFORMATION**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to receive a report on the Historic Landmarks, General Information was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: 2007 ANNUAL REPORT OF THE DURHAM ENVIRONMENTAL AFFAIRS BOARD**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to receive the 2007 Annual Report of the Durham Environmental Affairs Board was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: LICENSE AGREEMENT WITH WESTON DOWNS, LLC**

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**MOTION** by Council Member Catotti seconded by Council Member Woodard to authorize the City Manager to enter into a license agreement with Weston Downs, LLC for installation and maintenance of an irrigation system within the public Right-of-Way was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: CAPITAL PROJECT ORDINANCE AMENDMENT – NC147  
PEDESTRIAN BRIDGE PROJECT U-4445**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to adopt an ordinance amending the General Capital Improvement Project Ordinance, Fiscal Year 2008-09, as amended, the same being Ordinance #13632 for the purpose of recognizing the additional N.C. Department of Transportation revenue of \$800,000.00 was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**Ordinance #13707**

**SUBJECT: AGREEMENT FOR A DEDICATED INTERNET ACCESS SERVICE  
CONNECTION AT POLICE HEADQUARTERS - TIME WARNER  
CABLE**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to authorize the City manager to execute a dedicated Internet Access Agreement with Time Warner Cable, Time Warner Cable Business Class commercial Service Order agreement in the amount of \$37,036.00 for three years of service; and

To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement was approved at 8:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: EXTENSION OF WATER SALES AGREEMENT - ORANGE WATER  
AND SEWER AUTHORITY (OWASA)**

**MOTION** by Council Member Catotti seconded by Council Member Woodard to authorize the City Manager to execute an Agreement Extending the Term of Agreement Providing for the Sale and Purchase of Water with the Orange Water and Sewer Authority (OWASA); and

To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement was approved at 8:04

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p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

*The City Council disposed of the following agenda items at the September 18, 2008 Work Session:*

**5. Attendance Reports for Boards, Committees and Commissions**

To receive attendance reports from the following Boards, Committees and Commissions for the period January 1, 2008 - June 30, 2008:

Audit Services Oversight Committee, Cable TV Advisory Board, Capital Program Advisory Committee, Citizens Advisory Committee, Design District Review Team, Durham Area Transit Authority Board of Trustees, Durham Bicycle and Pedestrian Advisory Commission, Durham Board of Adjustment, Durham City-County Appearance Commission, Durham Civic Center Authority, Durham Convention & Visitors Bureau, Durham Cultural Master Plan Advisory Board, Durham City-County Environmental Affairs Board, Durham Housing Authority Board of Commissioners, Durham Open Space & Trails Commission, Durham Performing Arts Center Oversight Committee, Durham Planning Commission, Equal Business Opportunity Program Advisory Committee, Durham Historic Preservation Commission, Human Relations Commission, Housing Appeals Board, Passenger Vehicle For Hire Commission, Raleigh-Durham Airport Authority, Recreation Advisory Commission, and the Workforce Development Board.

*(This item was referred back to the Administration - City Clerk's Office)*

**27. City of Durham and North Carolina Department of Transportation (NCDOT) Lease Agreement for Parking for the New Amtrak Station**

To authorize the City Manager to execute a lease agreement pursuant to G.S. 160A-274 with North Carolina Department of Transportation for parking associated with the new Amtrak Station (Lot 30); and

To authorize the City Manager to modify the lease agreement before execution, provided the modifications do not increase the financial obligations of the City and is consistent with the general intent of the version of the Contract approved by City Council.

*(This item was approved at the 09-18-08 Work Session with a vote of 7/0)*

**30. August 2008 Monthly Crime Report**

To receive the August 2008 Monthly Crime Report.

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*(A presentation was received at the 09-18-08 Work Session)*

**31. The Alternatives Analysis for 2035 Long Range Transportation Plan (2035 LRTP)**

To receive a presentation on the transportation projects in Alternatives Analysis Report for the 2035 Long Range Transportation Plan.

*(A presentation was received at the 09-18-08 Work Session)*

**32. Bulky Item Collections and Roll-Off Container Program**

To receive a presentation on curbside bulky item collection and roll-off container rental services.

*(A presentation was received at the 09-18-08 Work Session)*

**37. Durham-Orange Community Tennis Association**

To receive comments from Anna Mercer-McLean concerning surfacing public tennis courts.

*(Comments were received at the 09-18-08 Work Session)*

**38. Zakee Rahim**

To receive comments from Zakee Rahim concerning students parking in handicap parking spaces.

*(Citizen did not appear at the 09-18-09 Work Session)*

**39. Proposed Sale of Property at 521-B Eastway Avenue PIN# 0831-10-45-4470**

To determine the property at 521-B Eastway Avenue to be surplus;

To authorize the sale of the property under the authority of Section 86 of the City Charter;

To accept the offer to purchase for the property located at 521-B Eastway Avenue; and

To authorize the City Manager and the Mayor to sell and convey the property by a non-warranty deed and authorize the City Manager to terminate these contracts for sale if the contract terms are not fulfilled.

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*(This item was approved at the 09-18-08 Work Session with a vote of 7/0)*

**40. North Carolina ACORN**

To receive comments from Melvin Whitley regarding SAVE A WATT;

To authorize the City Manager and City Attorney to intervene on behalf of the City of Durham in utility commission dockets to advocate for the creation of an energy efficiency program for North Carolina with an independent administrator; and that energy efficiency programs benefitting low and moderate income citizens should be included in any energy efficiency programs established, authorized or ordered by the N. C. Utilities Commission; and

To adopt a Resolution of the City Council of the City of Durham On An Independent Energy Efficiency Administrator. **Resolution #9603**

*(Comments were received at the 09-18-08 Work Session and the item was approved by a vote of 6/0).*

**[GENERAL BUSINESS AGENDA]**

**SUBJECT: BEER AND WINE PRIVILEGE LICENSE ISSUANCE**

To approve the local Beer and Wine Privilege Licenses for listed establishments.

**Note: This item was referred back to the administration – Finance Department.**

**[PUBLIC HEARINGS]**

**SUBJECT: ORDERING IMPROVEMENTS - CURB, GUTTER AND PAVING,  
WATER AND SEWER LATERALS ON MISSELL AVENUE - SIDEWALK  
ON FAYETTEVILLE ROAD**

Engineering & Storm Water Manager Ed Venable made comments on the improvements.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

**MOTION** by Council Member Woodard seconded by Council Member Catotti to receive public comments on the following proposed improvements; and

To adopt resolutions ordering the below improvements was approved at 8:05 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

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a. Curb, Gutter and Paving, Water and Sewer Laterals on Missell Avenue from Cook Road to the South Property Line of PIN 0729-01-49-7397

b. Sidewalk on Fayetteville Road (West Side) from the North Property Line of PIN 0717-02-69-7405 to the South Property Line of PIN 0717-02-69-7405.

**SUBJECT: MINI ASSESSMENT ROLL FOR SEWER MAIN ON RIVERMONT ROAD FROM NORTHEAST PROPERTY LINE OF TAX MAP 767-4-17 SOUTHWEST TO THE RIVERMONT ROAD OUTFALL**

Engineering & Storm Water Manager Ed Venable informed Council that the mini assessment roll was continued from a previous public hearing. He reported the property on Rivermont Road has benefitted from the sewer main improvement and staff recommends approving the assessment for this item.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

**MOTION** by Council Member Woodard seconded by Council Member Catotti to reconsider the assessment against the property of Nathan L. and Melinda R. Stanley; and

To find that the property, identified as 3801 Rivermont Road, PIN 0803-02-89-5293, has benefited from the sewer main improvement and to confirm the assessment in the original amount was approved at 8:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: MERCHANDISE-BASED IMPROVEMENT PROGRAM CONTRACT WITH REVOLUTION RESTAURANT GROUP, LLC**

Mike Keeler, with the Office of Economic and Workforce Development, made comments on this item.

Mayor Bell opened the public hearing. There being no one to speak in support or against this item, the Mayor closed the public hearing.

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to receive public comments on the proposed economic development incentives agreement per GS 158-7.1;

To authorize the City Manager to execute a contract with Revolution Restaurant Group, LLC in the amount of \$7,500.00 to purchase restaurant equipment; and

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To authorize the City Manager to modify the contract provided that the modifications do not increase the dollar amount to be paid by the City and the modifications are consistent with the general intent of the contracts was approved at 8:07 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: ZONING MAP CHANGE – MERIDIAN PARKWAY/EXCHANGE PLACE (Z0800024) – PATRICK BYKER, KENNEDY COVINGTON LOBDELL & HICKMAN**

To receive public comments on the zoning map change for Meridian Parkway/Exchange Place (Z0800024);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z0800024 out of IL; F/-J-B and MTC (partial) and placing same in and establishing same as OI; F/J-B and MTC (partial); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan, and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Recommendation: Approval, based on consistency with the Comprehensive Plan, and considering the information contained in this report.

Planning Commission Recommendation and Vote: Approval, 7-6 on August 12, 2008. The Planning Commission finds that the ordinance request is consistent with the adopted Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on the information in the staff report and comments received during the public hearing.

[The site is located on the west side of Meridian Parkway at the intersection with Exchange Place. PINs: 0728-02-75-9951, -76-7455, -86-6434 (partial)]

Patrick Young, of the City/County Planning Department, certified that all notifications for this item have been provided as required by law and affidavits are on file for public review. He briefed Council on the request to change the zoning designation from IL - Industrial Light to OI - Office Institutional for an unspecified use. He noted the parcel would remain within the Falls Jordan B Overlay District and the Major Transportation Corridor Zoning Overlay. He reported

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the proposed OI zoning allows a less intense set of uses than the existing IL zoning and the proposed OI zoning allows uses more consistent with development such as office and multi-family residential uses within and near the existing Meridian Business Park. He reported the proposed zoning is consistent with the Future Land Use Map and any major development proposed on this property would require additional review as a major site plan by the Development Review Board and the City Council. He stated staff recommends approval based on consistency with the Comprehensive Plan and other information provided in the staff report. He stated the Planning Commission recommended approval of this item.

Mayor Bell opened the public hearing.

### **Proponents**

Patrick Byker, representing the America's Capital Partners—owner of Meridian Business Park, spoke in support of this item. He outlined three reasons why Council should support this request: 1) these 32 acres are presently zoned industrial but the predominate land uses nearby are office and residential. Since the surrounding uses are predominately residential and office, industrial is not an appropriate use of this property; 2) several environmentally sensitive features located on this acreage such as floodplain areas and intermittent stream. He noted industrial uses are very intense uses of property. Accordingly, changing the zoning designation to a less intensive use such as office institutional makes a lot of sense and the proposed change is supported by the Comprehensive Plan; and 3) the letter from Auburn Homeowners Association, Inc. in support of this request. He stated there is not a development plan attached to this request since it is not required and because America's Capital Partners has no specific project identified for this acreage at the present time. He stated this is a down zoning that is following the direction of the Comprehensive Plan since this area is designated as office on the Future Land Use Map. In addition, he acknowledged they would be required by the UDO to submit a site plan after America's Capital Partners decides to proceed with any development on this site.

Doug Mullen, of 14 Richardson Circle, spoke in support of this zoning map change. He felt that the use of industrial is appropriate for this area and urged Council to support this request.

### **Opponent**

Melissa Rooney, of 301 Spring Garden Drive, spoke against this zoning map change. She read the following letter from the Northeast Creek Streamwatch:

Dear City Council Members,

This letter is in regard to the Meridian Parkway rezoning case (# 08-00024), which goes before City Council on October 6. This development is planned for 32.11 acres located on the west side of Meridian Parkway at the intersection with Exchange Place. This land is on the Northeast Creek floodplain between Barbee and Highway 55, along I-40. More than half (60%) of this land parcel is *in* the floodplain. Several Planning Commissioners have stated their belief that this land should not be built upon because of its environmental sensitivity. If the 40% that is adjacent to

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the floodplain is developed, there will be no buffer for containing the Creek nor for filtering rainwater draining into the Creek.

In addition, this land parcel is right across the street from a subdivision comprised of single family homes, which will almost certainly be detrimentally affected by flooding and run-off from any impervious surface that is developed here.

The planning department informs that no development plan was submitted with this rezoning case, and so there are no committed elements. In her comments to Public Officials, Planning Commissioner LaDawnna Summers wrote: "Most of this is floodplain. Without a development plan, there is no way to ensure committed elements are made to protect the environmentally sensitive area."

Another planning commissioner has explained (and Durham Planner Amy Wolf confirmed) that "The O/I zoning [for which they have applied] allows for 10.5 residential units per acre," calculated as "net acreage." For land area in the floodplain, 50% credit is given. This means that the actual density on the non-floodplain land can be much higher than 10.5 units per acre and it would still comply with the zoning. "Ergo, they can build a pile of apartments with no development plan."

Furthermore, a nearby hotel called Crestwood Suites-Durham has already reported serious flooding issues, particularly in the back part of the *elevated* section of their lot. Developing this small portion of remaining, forested land adjacent to the floodplain will only serve to exacerbate these problems.

Durham has already allowed too much land immediately adjacent to the floodplain to be filled, resulting in sedimentation and pollution (nitrogen, phosphorous, and resulting algae) of Northeast Creek, which flows into Jordan Lake, and causing further degradation of this already seriously impaired waterway.

We ask that our government officials think long and hard about the long-term effects of this particular development, and at the very least, ensure that they are presented with, and are willing to be held accountable for, environmentally sensitive, *committed* development plans. Otherwise, you are giving this development team a blank check to further damage Durham's waterways.

Thank you for your serious consideration of this important matter.

## **Rebuttal**

Patrick Byker, representing America's Capital Partners, stated based on the comments heard--it would be worst to leave this land zoned industrial than to change it to office as proposed. He urged Council to approve this request in order to address the concerns raised by the Northeast Creek Streamwatch.

Mayor Bell asked staff if they have seen the report read by Ms. Rooney.

**October 6, 2008**

Patrick Young, of the City/County Planning Department, replied they had not seen the report, but received comments at the Planning Commission meeting that were similar in nature.

Mayor Bell made comments noting he was familiar with the area and with the flooding effects in this area. He asked staff if they could address what the proponents are requesting.

Patrick Young, of the City/County Planning Department, stated the uses allowed under the current zoning, are significantly more intense and would have a greater impact on the environment and on the adjacent neighborhoods than the O & I district. He stated the storm water management, floodplain regulations, buffering requirements and stormwater rules that are in place would mitigate the impact on the environment.

Mayor Bell expressed flooding concerns and asked staff if the tools are in place to minimize against concerns that have been raised.

Patrick Young, of the City/County Planning Department, replied yes.

Mayor Bell asked the applicant what are their intentions in terms of development for this area.

Patrick Byker, representing America's Capital Partners, stated they do not know at this point since it's hard to get financing for any type of project.

Council Member Catotti asked staff to clarify what is the height limitation for office /institutional zoning, what is allowed in terms of construction in the floodplain and what are the requirements for going to the Development Review Board [DRB].

Patrick Young, of the City/County Planning Department, reported in terms of development that's allowed administratively it would only be single family or a duplex type development which is not allowed in the O&I and IL zone. He mentioned if there was a crossing--such as a sewer easement, water easement, or road-- that could be approved by the DRB. Any other development beyond that would be a major site plan which would require review by DRB and the Council.

Council Member Catotti stated she would not be supporting any construction in the floodplain.

Patrick Young, of the City/County Planning Department, reported the building height limitation is 50 feet, but that could be increased up to 145 feet based on the issuance of a minor special use permit. Also, he referenced the process for a minor special use permit.

Council Member Catotti stated she would prefer to see a development plan on this request, but it is appropriate to change the rezoning and announced that citizens should get involved when this issue comes to the Development Review Board.

Mayor Pro Tempore Cole-McFadden asked Mr. Mullen if he was the chair of the homeowners association.

**October 6, 2008**

Doug Mullen replied no.

Patrick Byker informed the Council that Kelly Colver was deputized to write this letter.

Mayor Bell closed the public hearing.

For clarification, Patrick Young of the Planning Department stated a minor special use permit would have to go to the Board of Adjustment and not the Development Review Board.

**MOTION** by Council Member Clement seconded by Council Member Woodard to receive public comments on the zoning map change for Meridian Parkway/Exchange Place (Z0800024);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change case Z0800024 out of IL; F/-J-B and MTC (partial) and placing same in and establishing same as OI; F/J-B and MTC (partial); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan, and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**Ordinance #13708**

**[SUPPLEMENTAL ITEM]**

**SUBJECT: BANDWIDTH.COM, INCORPORATION**

To receive public comments on Bandwidth.com, Incorporation;

To authorize the City Manager to execute a contract with Bandwidth.com, Incorporation for an economic development incentive in an amount not to exceed \$400,000.00; and

To authorize the City Manager to make changes as may be needed so long as they do not increase the amount to be paid by the City nor reduce the benefits to be gained by the City.

Mayor Bell opened the public hearing.

**MOTION** by Council Member Woodard seconded by Council Member Clement to continue the public hearing to the October 20, 2008 City Council Meeting was approved at 8:28 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**October 6, 2008**

**[ITEMS PULLED FROM CONSENT AGENDA]**

**SUBJECT: BIDS - DURHAM POLICE DEPARTMENT RAINWEAR -  
SHOWFETY'S, INC.**

Victoria Peterson asked the City Manager to encourage contractors to hire African American males.

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to accept the bid from Showfety's Inc., in the amount of \$125,568.00, for providing the Police Department with rain coats;

To authorize the City Manager to enter into a contract with Showfety's, Inc., in the amount of \$125,568.00, for providing the Police Department with rain coats; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 8:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: CONTRACT FOR SERVICES WITH THE GREATER DURHAM  
CHAMBER OF COMMERCE FOR THE "MAKE IT DURHAM"  
CAMPAIGN**

Victoria Peterson raised a concern regarding the bidding process for private contracts.

Assistant City Manager for Economic and Workforce Development Alan DeLisle explained the purpose of this item.

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the City Manager to execute a contract with the Greater Durham Chamber of Commerce, Inc. in the amount of \$30,000.00 for the "Make It Durham" campaign; and

To authorize the City Manager to make minor changes to the contract as needed as long as the changes do not decrease the benefits to be provided to the City nor increase costs to the City was approved at 8:34 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

**SUBJECT: CONTRACT AMENDMENTS FOR CONTRACT ST-228, STREET  
REPAIRS AND RESURFACING AND PROFESSIONAL SERVICES FOR**

October 6, 2008

**CONSTRUCTION ADMINISTRATION - BARNHILL CONTRACTING,  
INCORPORATED - GREENHORNE AND O'MARA, INCORPORATED**

Victoria Peterson asked Council to encourage companies to hire ex-offenders and local citizens.

**MOTION** by Council Member Woodard seconded by Council Member Catotti to authorize the City Manager to amend contract ST-228 Street Repairs and Resurfacing with Barnhill Contracting, Incorporated by \$847,883.00 representing a 50% increase over the \$1,695,766.43 previously authorized expenditure to facilitate continuation of the resurfacing construction;

To authorize the City Manager to amend the professional services contract with Greenhorne and O'Mara, Incorporated by \$230,622.00 representing a 45.22% increase over the \$510,000.00 previously authorized expenditure to facilitate continuation of the construction administration; and

To authorize the City Manager to modify the contract before execution provided that the modifications do not increase the dollar amount of the contract and that the modifications are consistent with the general intent of the existing version of the contract was approved at 8:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

There being no further business to come before the City Council, the meeting was adjourned at 8:38 p.m.

Linda E. Bratcher, CMC  
Deputy City Clerk

D. Ann Gray, MMC  
City Clerk